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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,228	10/16/2003	Steven D. Culhane	02-200-US2	9854
34704	7590	10/08/2004	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,228	<b>Applicant(s)</b> CULHANE, STEVEN D.	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to amendment filed on 08/10/04. Claim 10 has been amended and claims 11-19 are unchanged. Upon further consideration there has been a problem found with the disclosure dealing with the non-stretch material. A non-final office action is detailed below.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for defining a stretch fabric material, does not reasonably provide enablement for defining a non-stretch fabric material. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to define the invention commensurate in scope with these claims. The specification does not define what the non-stretch material is made out of. All fabrics have some degree of stretch and without providing examples of the non-stretch material the invention is not enabled.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kratz (US 4,722,099).

In regard to claims 10-13, Kratz provides a garment having a front portion and a rear portion (figures 2 and 3). A pair of arms being joined to the front and rear portions (figures 2 and 3, identifiers 62 and 64). Each of the arms having an elbow portion formed from a mesh fabric material and other portions from an artificial leather or leather fabric material (figures 2 and 3, identifiers 88, 62, 64, 92, 94, 90: column 1, lines 63-68 through column 2, lines 1-2). Additionally, the outer elbow portions are formed from a mesh fabric material based upon the outer elbow locations as illustrated by the instant Application (see figure 3, portion 92 and 94). The rear portions having at least one portion formed from a mesh fabric material (figure 3, identifiers 36, 38, 70 and 72: column 5, lines 17-53). The rear portions having a first and second side portions and a central portion wherein each of the first and second side portions are formed from a stretch fabric material (figure 3, identifiers 36, 38, 70 and 72; column 5, lines 17-53). The central portion is formed from an artificial leather or a leather material (figure 3, identifiers 102: column 1, lines 63-68 through column 2, lines 1-3). It is inherent that the

Art Unit: 3765

mesh of Kratz has stretch since, Kratz uses flexible cloth mesh in the shoulder vents which is diagramed as the same mesh used in the elbows, underarms and sides of the back vents in the jacket, flexible cloth mesh has stretch. It is further inherent that the artificial leather used in the body of the garment is non-stretch. Artificial leather's are made by a woven base to which a solid and expanded vinyl substance is added making it non-stretch.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Blauer et al. (US 5,593,754).

Kratz provides a garment as described above in claim 10. However, Kratz fails to teach a liner within the garment formed from a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer. Blauer et al. provides a garment having a liner formed of a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer (figures 3 and 4, identifiers 22, 24, 30, 32 and 34: column 8, lines 5-19).

It would have been obvious to have provided the outer garment of Kratz with the liner of Blauer et al., since the dual liner would provide the outer garment of Kratz with

Art Unit: 3765

superior breathability, water fastness and stretchability keeping the user dryer, cooler, more comfortable.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Lipson (US 2,002,955).

Kratz provides an outer garment as described above in claim 10. However, Kratz fails to teach the outer garment having a hood that is detachable and collapsible to the outer garment.

Lipson provides an outer garment having a hood that is detachable and collapsible to the outer garment (figures 1-6, identifiers 2, 10, 12, 6 and 8: page 1, column 2, lines 12-45).

It would have been obvious to have provided the outer garment of Kratz with the hood of Lipson, since the outer garment of Kratz having a detachable and collapsible hood would provide the user with a hood that can protect the wearer's head from the elements and can also be detached and stored when not needed by the wearer.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 10-19 have been considered but are moot in view of the new ground(s) of rejection.

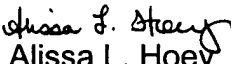
### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

Art Unit: 3765

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alissa L. Hoey  
Patent Examiner  
Technology Center 3700